
FIRST AMENDMENT

Dated as of November 14, 2018

to

AMENDED AND RESTATED
MASTER INSTALLMENT PURCHASE AGREEMENT

Dated as of January 1, 2009

by and between the

CITY OF SAN DIEGO

and the

SAN DIEGO FACILITIES AND EQUIPMENT
LEASING CORPORATION

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	2
Section 1.01 Definitions	2
ARTICLE II REPRESENTATIONS AND WARRANTIES	4
Section 2.01 City Representations and Warranties	4
Section 2.02 Corporation Representations and Warranties	5
ARTICLE III COLLATERAL AGENT	5
Section 3.01 Role of Collateral Agent – Collection and Payment	5
Section 3.02 Role of Collateral Agent – Enforcement	5
Section 3.03 No Nullification of Assignments	6
ARTICLE IV AMENDMENTS TO THE AGREEMENT	6
Section 4.01 Amendment of Section 1.01 of the Agreement	6
Section 4.02 Amendment of Section 5.01 of the Agreement	7
Section 4.03 Amendment of Section 5.02 of the Agreement	8
Section 4.04 Amendment of Article VIII of the Agreement	9
ARTICLE V MISCELLANEOUS.....	10
Section 5.01 Successor Is Deemed Included in all References to Predecessor	10
Section 5.02 Article and Section Headings, Gender and References	10
Section 5.03 California Law	10
Section 5.04 Effective Date	10
Section 5.05 Execution in Counterparts	10

**FIRST AMENDMENT
TO AMENDED AND RESTATED
MASTER INSTALLMENT PURCHASE AGREEMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED MASTER INSTALLMENT PURCHASE AGREEMENT (this “**First Amendment**”), dated as of November 14, 2018, is by and between THE CITY OF SAN DIEGO, a municipal corporation organized and existing under a charter duly adopted pursuant to the provisions of the Constitution of the State of California (the “**City**”), and the SAN DIEGO FACILITIES AND EQUIPMENT LEASING CORPORATION, a nonprofit public benefit corporation organized and existing under and by virtue of the laws of the State of California (the “**Corporation**”).

WITNESSETH:

WHEREAS, the City and the Corporation have heretofore entered into an Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, a 2009A Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2009, a 2009B Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of June 1, 2009, a 2010A Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of June 1, 2010, a 2012A Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of April 1, 2012, a 2016 Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of June 1, 2016, and a 2017 Commercial Paper Supplement to Amended and Restated Master Installment Purchase Agreement, dated as of January 1, 2017, (collectively, and as further supplemented and amended, the “**Agreement**”), each by and between the City and the Corporation, pursuant to which the Corporation has agreed to sell certain improvements and additions (comprised of various components, each, a “**Component**”) to the water system of the City (the “**Water System**”) and the City has agreed from time to time to purchase certain Components as specified in certain supplements to the Agreement; and

WHEREAS, the City has determined that it is in its best interests and the best interests of its residents to amend the Agreement and, concurrently with the execution and delivery of this First Amendment, to enter into the Collateral Agency Agreement (as defined herein), to (i) clarify the rights and remedies of Owners of Secured Obligations, (ii) clarify the application of Net System Revenues, and (iii) provide for a Collateral Agent to (a) receive the grant of security in the Net System Revenues, (b) administer the application of Net System Revenues among Owners of Obligations issued or incurred under various Issuing Instruments pursuant to the flow of funds set forth in the Collateral Agency Agreement and (c) enforce remedies following an Event of Default, in each case on behalf of, and for the benefit of, all Owners of Secured Obligations; and

WHEREAS, the Agreement and the rights and obligations of the City and the Corporation thereunder may be amended or supplemented at any time by an amendment thereof or supplement thereto which shall not adversely affect the interests of the Owners of the Installment Payment Obligations and which shall become binding upon execution by the City and the Corporation, without the written consents of any Owner of Installment Payment Obligations or any Credit Provider; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this First

Amendment do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this First Amendment.

NOW THEREFORE, the parties hereto have agreed as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. Capitalized terms used in this First Amendment but not defined herein have the meanings given those terms in the Agreement. As used in this First Amendment, the following additional terms have the following meanings:

Authority

The term “Authority” means the Public Facilities Financing Authority of the City of San Diego, a joint exercise of powers agency established and existing under the laws of the State of California.

Collateral Agency Agreement

The term “Collateral Agency Agreement” means the Collateral Agency, Account and Assignment Agreement dated as of November 14, 2018 among, among others, the City, the Corporation, the Authority, the United States Environmental Protection Agency, the Trustee and the Collateral Agent, as the same may be amended or replaced.

Collateral Agent

The term “Collateral Agent” means U.S. Bank National Association, a national banking association organized under the laws of the United States, in its capacity as Collateral Agent, and any successor Collateral Agent under a Collateral Agency Agreement.

Indenture

The term “Indenture” means the Indenture, dated as of January 1, 2009, as amended and supplemented from time to time, by and between the Authority and the Trustee.

Interest Portion

The term “Interest Portion” means the portion of any Installment Payment specified as interest in any Supplement.

Parity Obligation Interest Funding Date

The term “Parity Obligation Interest Funding Date” means each Parity Obligation Installment Payment Date on which the Interest Portion is due and payable under the Agreement as well as each date on which interest is due and payable on any Parity Obligation under any other Issuing Instrument.

Parity Obligation Principal Funding Date

The term “Parity Obligation Principal Funding Date” means each Parity Obligation Installment Payment Date on which the Principal Portion is due and payable under the Agreement as well as each date on which principal or mandatory sinking fund redemptions are due and payable on any Parity Obligation under any other Issuing Instrument.

Parity Obligations Interest Account

The term “Parity Obligations Interest Account” means the account of that name established and maintained by the Collateral Agent under the Collateral Agency Agreement.

Parity Obligations Payment Fund

The term “Parity Obligations Payment Fund” means the fund of that name established and maintained by the Collateral Agent under the Collateral Agency Agreement.

Parity Obligations Principal Account

The term “Parity Obligations Principal Account” means the account of that name established and maintained by the Collateral Agent under the Collateral Agency Agreement.

Principal Portion

The term “Principal Portion” means the portion of any Installment Payment specified as principal in any Supplement.

Secured Obligations

The term “Secured Obligations” means Parity Obligations and/or Subordinated Obligations, as the context requires.

SRF Loan Agreements

The term “SRF Loan Agreements” means Obligations evidenced by agreements by and between the City and the California State Water Resources Control Board or the California State Department of Public Health or any successor lender under any State Revolving Fund loan.

Subordinated Obligation Interest Funding Date

The term “Subordinated Obligation Interest Funding Date” means each Subordinated Obligation Installment Payment Date on which the Interest Portion is due and payable under the Agreement as well as each date on which interest is due and payable on any Subordinated Obligation under any other Issuing Instrument.

Subordinated Obligation Principal Funding Date

The term “Subordinated Obligation Principal Funding Date” means each Subordinated Obligation Installment Payment Date on which the Principal Portion is due and payable under the

Agreement as well as each date on which principal or mandatory sinking fund redemptions are due and payable on any Subordinated Obligation under any other Issuing Instrument.

Subordinated Obligations Interest Account

The term “Subordinated Obligations Interest Account” means the account of that name established and maintained by the Collateral Agent under the Collateral Agency Agreement.

Subordinated Obligations Payment Fund

The term “Subordinated Obligations Payment Fund” means the fund of that name established and maintained by the Collateral Agent under the Collateral Agency Agreement.

Subordinated Obligations Principal Account

The term “Subordinated Obligations Principal Account” means the account of that name established and maintained by the Collateral Agent under the Collateral Agency Agreement.

Trustee

The term “Trustee” means U.S. Bank, National Association, as successor trustee under the Indenture.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.01 City Representations and Warranties. The City hereby represents and warrants that each of the following is true and correct:

(a) The City is a municipal corporation organized and existing under the Charter, which was duly adopted pursuant to the provisions of the Constitution of the State of California.

(b) The City has full legal right, power, and authority to enter into this First Amendment and perform its obligations hereunder, to carry out and consummate all transactions contemplated by this First Amendment, and the City has complied with the provisions of the Law in all matters relating to such transactions.

(c) By proper action, the City has duly authorized the execution, delivery, and performance of this First Amendment.

(d) The execution and delivery of this First Amendment and the consummation of the transactions herein contemplated do not and will not (i) violate any provision of any law or any order of any court or other agency of government; (ii) be in conflict with, result in a material breach of, or constitute a default (with due notice or the passage of time or both) under any provision of any indenture, material agreement, or other instrument to which the City is now a party or by which it or any of its material properties or assets is bound; or (iii) result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of the City.

Section 2.02 Corporation Representations and Warranties. The Corporation hereby represents and warrants that each of the following is true and correct:

(a) The Corporation is duly organized and existing under the laws of the State of California.

(b) The Corporation has full legal right, power, and authority to enter into this First Amendment and to carry out and consummate all transactions contemplated by this First Amendment.

(c) By proper action, the Corporation has duly authorized the execution, delivery, and due performance of this First Amendment.

(d) The execution and delivery of this First Amendment and the consummation of the transactions herein contemplated do not and will not (i) violate any provision of any law or any order of any court or other agency of government; (ii) be in conflict with, result in a material breach of, or constitute a default (with due notice or the passage of time or both) under any provision of any indenture, material agreement, or other instrument to which the Corporation is now a party or by which it or any of its material properties or assets is bound; or (iii) result in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature whatsoever upon any of the properties or assets of the Corporation.

ARTICLE III

COLLATERAL AGENT

Section 3.01 Role of Collateral Agent – Collection and Payment. As described further in the Collateral Agency Agreement, the Collateral Agent shall serve as agent of the Trustee and all Owners of Secured Obligations for purposes of receiving payments of Net System Revenues from the City and making payments on Obligations from Net System Revenues. The obligations of the City to make payments on Secured Obligations, including Installment Payments, to the Corporation, the Authority, the Trustee or any trustee or Owner pursuant to any Issuing Instrument shall be satisfied to the extent of payments made by the Collateral Agent to such entity pursuant to the terms of the Collateral Agency Agreement. In order to effect such payments, the City agrees to henceforth make payments to the Collateral Agent as provided in Section 5.02 of the Agreement (as amended by this First Amendment). Pursuant to the Collateral Agency Agreement, the Collateral Agent has agreed to allocate Net System Revenues received by it to the Owners of Obligations. Any Installment Payments or other payments on Obligations received by the Corporation shall be received in trust for the benefit of the Collateral Agent and the Corporation hereby agrees to promptly transfer any such amounts received by it to the Collateral Agent.

Section 3.02 Role of Collateral Agent – Enforcement. As described further in the Collateral Agency Agreement, (i) the Collateral Agent shall have the right to exercise all of the rights and remedies described in Article VIII of the Agreement as inuring to the Corporation, on behalf of and for the benefit of all Owners of Secured Obligations and any trustee on their behalf, including the Trustee, under this Agreement, the Indenture or any other Issuing Instrument and (ii) notwithstanding anything to the contrary set forth in the Agreement, the Collateral Agency Agreement or any other Issuing Instrument, from and after the date of this First Amendment, the Corporation shall not have any rights, pursuant to the Agreement, the Collateral Agency Agreement or any other Issuing

Instrument, (a) as a grantee of a pledge of Net System Revenues, (b) to accelerate or otherwise declare any Obligations immediately due and payable, (c) to exercise any remedies by or on behalf of the Owners of any Obligations or otherwise with respect to the Net System Revenues following an Event of Default or (d) to receive and/or apply any Net System Revenues to the payment of any Obligations following an Event of Default, and any provisions purporting to provide such rights to the Corporation shall be null and void.

Section 3.03 No Nullification of Assignments. Nothing herein shall nullify or adversely affect any past, present or future assignment or pledge of the rights of the Corporation under this Agreement to the Authority or to the Trustee.

ARTICLE IV

AMENDMENTS TO THE AGREEMENT

Section 4.01 Amendment of Section 1.01 of the Agreement.

(a) Section 1.01 of the Agreement is hereby amended by adding, in the appropriate alphabetical order, definitions for the following additional terms in the form set forth in Section 1.01 of this First Amendment: Authority; Collateral Agency Agreement; Collateral Agent; Interest Portion; Parity Obligation Interest Funding Date; Parity Obligation Principal Funding Date; Parity Obligations Interest Account; Parity Obligations Payment Fund; Parity Obligations Principal Account; Principal Portion; Secured Obligations; SRF Loan Agreements; Subordinated Obligation Interest Funding Date; Subordinated Obligation Principal Funding Date; Subordinated Obligations Interest Account; Subordinated Obligations Payment Fund; and Subordinated Obligations Principal Account.

(b) Section 1.01 of the Agreement is hereby amended by replacing the definition of “Installment Payments” with the following definition:

Installment Payments

The term “Installment Payments” means the Installment Payments scheduled to be paid by the City under and pursuant to this Installment Purchase Agreement and any supplement hereto as well as any amounts payable by the City on any Obligations under and pursuant to any Issuing Instrument.

(c) Section 1.01 of the Agreement is hereby amended by replacing the definition of “Parity Obligations” with the following definition:

Parity Obligations

The term “Parity Obligations” means Obligations the payment of which is secured by a first priority lien on and pledge of Net System Revenues pursuant to Section 5.01(a) of this Installment Purchase Agreement and Section 4 of the Collateral Agency Agreement.

(d) Section 1.01 of the Agreement is hereby amended by replacing the definition of “Subordinated Obligations” with the following definition:

Subordinated Obligations

The term “Subordinated Obligations” means Obligations the payment of which is secured by a second priority lien on and pledge of Net System Revenues that is junior and subordinate to the lien on and pledge of Net System Revenues securing Parity Obligations pursuant to Section 5.01(a) of this Installment Purchase Agreement and Section 4 of the Collateral Agency Agreement.

Section 4.02 Amendment of Section 5.01 of the Agreement. Section 5.01 of the Agreement is hereby amended in its entirety to read as follows.

SECTION 5.01. Commitment of the Net System Revenues. (a) All Parity Obligations, including Parity Installment Payment Obligations, shall be secured by a first priority lien on and pledge of Net System Revenues. The City does hereby grant to the Collateral Agent, for the benefit of the holders of Parity Obligations, a first priority lien on and pledge of Net System Revenues to secure Parity Obligations. All Parity Obligations shall be of equal rank with each other without preference, priority or distinction of any Parity Obligations over any other Parity Obligations; provided that a Parity Obligation that by its terms under certain circumstances can require the full amount of the Parity Obligation to become payable in installments over not less than five years from the occurrence of the triggering event shall not be deemed to create any impermissible preference, priority or distinction as to lien or otherwise of such Parity Obligation over any other Parity Obligation.

(b) All Subordinated Obligations, including Subordinated Installment Payment Obligations, shall be secured by a second priority lien on and pledge of Net System Revenues that is junior and subordinate to the lien on and pledge of Net System Revenues securing Parity Obligations. The City does hereby grant to the Collateral Agent, for the benefit of the holders of Subordinated Obligations, a second priority lien on and pledge of Net System Revenues to secure Subordinated Obligations. All Subordinated Obligations shall be of equal rank with each other without preference, priority or distinction of any Subordinated Obligations over any other Subordinated Obligations; provided that a Subordinated Obligation that by its terms under certain circumstances can require the full amount of the Subordinated Obligation to become payable in installments over not less than five years from the triggering event shall not be deemed to create any impermissible preference, priority or distinction as to lien or otherwise of such Subordinated Obligation over any other Subordinated Obligation; and provided further that a Subordinated Obligation that by its terms under certain circumstances must be treated as, or becomes, a Parity Obligation shall not be deemed to create any impermissible preference, priority or distinction as to lien or otherwise of such Subordinated Obligation over any other Subordinated Obligation.

(c) The City hereby represents and states that it has not granted any lien or charge on any of the Net System Revenues except as provided herein, in the Collateral Agency Agreement and in the SRF Loan Agreements; provided, however, that out of Net System Revenues there may be apportioned such sums for such purposes as are expressly permitted by this Article V.

(d) Nothing contained herein shall limit the ability of the City to grant liens on and pledges of the Net System Revenues that are subordinate to the liens on

and pledges of Net System Revenues for the benefit of Parity Obligations and Subordinated Obligations contained herein.

Section 4.03 Amendment of Section 5.02 of the Agreement. Section 5.02 of the Agreement is hereby amended in its entirety to read as follows.

SECTION 5.02. Allocation of System Revenues. (a) In order to carry out and effectuate the commitment and pledge contained in Section 5.01, the City agrees and covenants that all System Revenues shall be received by the City in trust and shall be deposited when and as received in the Water Utility Fund, which fund the City agrees and covenants to maintain so long as any Obligations remain unpaid, and all moneys in the Water Utility Fund shall be so held in trust and applied and used solely as provided herein in the amounts, at the times and only for the purposes specified below and in the following order of priority; provided that no amount shall be transferred on any date pursuant to any clause below until amounts sufficient for all the purposes specified under the prior clauses shall have been transferred or set aside; and provided further that in the event there are insufficient Net System Revenues to make all of the payments contemplated in any one clause below, then said transfers, deposits and payments directed by such clause shall be made as nearly as practicable pro rata, based upon the respective unpaid amounts of the Obligations addressed by such clause:

First, the City shall pay from the Water Utility Fund directly or as otherwise required all Maintenance and Operation Costs of the Water System;

Second, on each Parity Obligation Interest Funding Date and on each other date on which the following amounts shall be due and payable, the City shall transfer Net System Revenues from the Water Utility Fund to the Collateral Agent, for deposit in the Parity Obligations Interest Account of the Parity Obligations Payment Fund, the sum of (A) an amount equal to the interest due and payable on all Parity Obligations; plus (B) an amount equal to any continuing shortfall in transfers required to have been made to the Parity Obligations Interest Account on any preceding Parity Obligation Interest Funding Date;

Third, on each Parity Obligation Principal Funding Date and on each other date on which the following amounts shall be due and payable, the City shall transfer Net System Revenues from the Water Utility Fund to the Collateral Agent, for deposit in the Parity Obligations Principal Account of the Parity Obligations Payment Fund, the sum of (A) an amount equal to the principal and mandatory sinking fund redemptions due and payable on all Parity Obligations; plus (B) an amount equal to any continuing shortfall in transfers required to have been made to the Parity Obligations Principal Account on any preceding Parity Obligation Principal Funding Date;

Fourth, on each Parity Obligation Interest Funding Date, the City shall transfer Net System Revenues from the Water Utility Fund to the Collateral Agent, for deposit in any Parity Obligations Reserve Account (if any) the amount necessary so that the balance therein equals the applicable Parity Obligations Reserve Requirement; provided that in the event of any draw on a Reserve Fund Credit

Facility held in any Parity Obligations Reserve Account, there shall be deemed a deficiency in such Parity Obligations Reserve Account until the amount of the Reserve Fund Credit Facility is restored to its pre-draw amount;

Fifth, on each Subordinated Obligation Interest Funding Date and on each other date on which the following amounts shall be due and payable, the City shall transfer Net System Revenues from the Water Utility Fund to the Collateral Agent, for deposit in the Subordinated Obligations Interest Account of the Subordinated Obligations Payment Fund, the sum of (A) an amount equal to the interest due and payable on all Subordinated Obligations; plus (B) an amount equal to any continuing shortfall in transfers required to have been made to the Subordinated Obligations Interest Account on any preceding Subordinated Obligation Interest Funding Date;

Sixth, on each Subordinated Obligation Principal Funding Date and on each other date on which the following amounts shall be due and payable, the City shall transfer Net System Revenues from the Water Utility Fund to the Collateral Agent, for deposit in the Subordinated Obligations Principal Account of the Subordinated Obligations Payment Fund, the sum of (A) an amount equal to the principal and mandatory sinking fund redemptions due and payable on all Subordinated Obligations; plus (B) an amount equal to any continuing shortfall in transfers required to have been made to the Subordinated Obligations Principal Account on any preceding Funding Date; and

Seventh, on each Subordinated Obligation Interest Funding Date, the City shall transfer Net System Revenues from the Water Utility Fund to the Collateral Agent, for deposit in any Subordinated Obligations Reserve Account (if any) the amount necessary so that the balance therein equals the applicable Subordinated Obligations Reserve Requirement; provided that in the event of any draw on a Reserve Fund Credit Facility held in any Subordinated Obligations Reserve Account, there shall be deemed a deficiency in such Subordinated Obligations Reserve Account until the amount of the Reserve Fund Credit Facility is restored to its pre-draw amount.

(b) After the transfers, deposits and payments contemplated by subsection (a) above have been made, any amounts thereafter remaining in the Water Utility Fund may be used for any lawful purpose of the Water System.

Section 4.04 Amendment of Article VIII of the Agreement. Article VIII of the Agreement is hereby amended by adding a new Section 8.06 at the end of such Article as set forth below:

SECTION 8.06. Assignment by Corporation. The Corporation irrevocably and absolutely assigns, transfers and conveys to the Collateral Agent and any successor thereto all of the rights, privileges, duties and obligations of the Corporation under this Article VIII. So long as a Collateral Agency Agreement is in effect, all references to the Corporation in this Article VIII shall mean the Collateral Agent.

ARTICLE V

MISCELLANEOUS

Section 5.01 Successor Is Deemed Included in all References to Predecessor. Except as otherwise provided herein, whenever either the City, the Corporation, the Authority, the Trustee or the Collateral Agent is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City, the Corporation, the Authority, the Trustee or the Collateral Agent and all agreements and covenants required hereby to be performed by or on behalf of the City, the Corporation, the Authority, the Trustee or the Collateral Agent shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 5.02 Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All references herein to “Articles,” “Sections” and other subdivisions or clauses are to the corresponding Articles, Sections, subdivisions or clauses hereof; and the words “hereby,” “herein,” “hereof,” “hereto,” “herewith” and other words of similar import refer to the Agreement as a whole and not to any particular Article, Section, subdivision or clause hereof.

Section 5.03 California Law. This First Amendment shall be construed and governed in accordance with the laws of the State of California.

Section 5.04 Effective Date. This First Amendment shall become effective upon its execution and delivery by the City and the Corporation.

Section 5.05 Execution in Counterparts. This First Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this First Amendment has been executed by the City and the Corporation as of the year and date first above written.

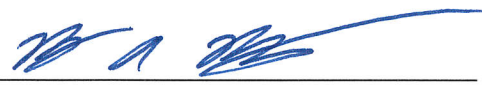
THE CITY OF SAN DIEGO

By: 

Rolando Charvel
Chief Financial Officer

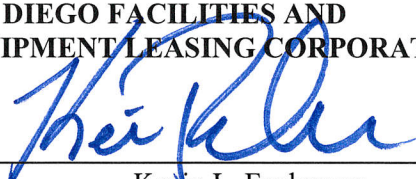
APPROVED AS TO FORM:

MARA W. ELLIOTT, City Attorney

By: 

Bret A. Bartolotta
Deputy City Attorney

**SAN DIEGO FACILITIES AND
EQUIPMENT LEASING CORPORATION**

By: 

Kevin L. Faulconer
President

[Signature Page – San Diego Water – First Amendment to Amended and Restated MIPA]